

REMARKS

Status of the Claims

Upon entry of the amendment above, claims 1-5, 7-12, and 14-30 will be pending, claims 1, 25, and 26 being independent.

Summary of the Office Action

Claim 13 is objected to as an improper dependent claim, allegedly for failing to further limit the subject matter of a previous claim.

Claims 1, 3-5, 7-9, 13, 14, 25, 26, and 29 are rejected under 35 USC §102(b) as being anticipated by PREMAN (U.S. Patent No. 5,224,280).

Claims 2, 10-12, 21-24, 27, 28, and 30 are rejected under 35 USC §103(a) as being unpatentable over PREMAN.

Claim 15 is rejected under 35 USC §103(a) as being unpatentable over PREMAN in view of CHU (U.S. Patent No. 6,470,599).

Claims 16-20 are rejected under 35 USC §103(a) as being unpatentable over PREMAN in view of CHANG (DE 101 07 824).

Response to the Office Action

A. Summary of Interview

Applicants' undersigned representative thanks Examiner Stashick for granting an interview on August 2, 2006 for the purpose of discussing the claims of the instant application, particularly in light of the disclosure of PREMAN, which is relied upon in each of the grounds of rejection.

Also discussed was the objection to claim 13, the subject matter of which, although slightly revised based upon the interview and the Examiner's comments in the Office action, has been incorporated into the independent claims by amendment above.

As presented in the prior amendment, claim 13 had specified that the elastically deformable element (such as element 130 in Applicants' illustrated exemplary embodiment) "does not extend upwardly at the medial and lateral edges of the outsole."

In the Office action and at the interview, the Examiner explained that in Applicants' illustrated embodiment, because the elastically deformable element includes a thickness, that thickness can be said to extend upwardly (whether at the medial and lateral edges of the outsole or otherwise).

Applicants' representative agreed, however, as the Examiner explained, the upper surface of the elastically deformable element cannot be said to extend upwardly and, therefore, if the subject matter of claim 13 were so amended (i.e., to refer to the upper surface of the elastically deformable element), the objection would be withdrawn and, further, if such subject matter were incorporated into the independent claims, the rejections based upon PREMAN would be withdrawn.

B. Summary of the Amendment and Request for Withdrawal of Rejections

In the amendment above, independent claim 1 has been amended in the manner mentioned above, and claim 13 has been canceled. In making the amendment, Applicants have specified that the *upper surface* of their elastically deformable element extends downwardly to medial and lateral edges of the outsole and that the upper surface does not extend upwardly at the medial and lateral edges of the outsole.

By contrast, the upper surface of element 3 of PREMAN extends upwardly at the medial and lateral edges of the outsole. See the cross-sectional view of Fig. 3 of PREMAN, for example.

Independent claims 25 and 26 are similarly amended, i.e., by referring to the *upper surface* of the elastically deformable element as extending transversely and downwardly from the uppermost central portion at least to positions vertically beneath the medial and lateral sides of the upper, but that the upper surface of the elastically deformable element does not extend upwardly vertically beneath either of the medial and lateral sides of the upper.

By contrast, again with exemplary reference to PREMAN's Fig. 3, the walls 14, 14 extend upwardly beneath both the medial and lateral sides of the upper.

As mentioned in Applicants' reply to the previous Office action, the vertical portions 14 of the member 3 and channels 15 are important to PREMAN's invention and, consequently, one skilled in the art would not look to modify or eliminate them and, thereby, create Applicants' claimed invention. Further, as also explained previously, with the vertical portions 14 of PREMAN shown in Fig. 3, it would not appear that the PREMAN bottom assembly could possibly function in the manner shown in Applicants' Fig. 6, whereby the intermediate member 160 on the upslope side of the shoe 100 is quite compressed. In PREMAN, vertical portions 14 would appear to provide vertical rigidity, perhaps similar to the example of the prior art shown in Applicants' Fig. 2 and explained in paragraph 0012 of your specification (and paragraphs 0007, 0008). Accordingly, Applicants' claims are directed to both structural and functional differences compared to PREMAN.

In addition to amending the independent claims by incorporating therein the subject matter discussed during the aforementioned interview, Applicants amended the wording of dependent claim 29 to clarify, in that claim, that the upwardly facing convex surface of the elastically deformable extends from the medial edge to the lateral edge of the outsole, rather than that it merely extends between such edges. In any event, claim 29 should be allowed at least for the reason that it depends from independent claim 26.

Although Applicants respectfully submit that the claims as presented above - independent and dependent - include limitations in addition to those mentioned hereinabove which provide further patentable differences vis-à-vis the prior art of record, such as the pluralities of medial and lateral arms of the elastically deformable element (such as arms 132 or 232 shown in Figs. 15 and 16), reconsideration and withdrawal of the rejections are kindly requested at least for the reasons mentioned above.

SUMMARY AND CONCLUSION

The grounds of objection and rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

The Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089, including the fee for an extension of time for one month.

Further, although an extension of time for one month is believed to be necessary at this time, if it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicants request an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,
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